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September 18, 2008

**VIA OVERNIGHT DELIVERY**

Letitia A. Thompson  
Regional Administrator, Region III  
Federal Transit Administration  
U.S. Department of Transportation  
1760 Market St.  
Suite 500  
Philadelphia, PA 19103-4124

Re: Joint Development Project Review of the Takoma Metro Station Development

Dear Ms. Thompson:

I am writing on behalf of the City of Takoma Park, Maryland, to express the City's opposition to the Washington Metropolitan Area Transit Authority's August 21, 2008, application<sup>1</sup> for Federal Transit Administration approval of the proposed joint development project at WMATA's Takoma Metro station ("EYA project"). The City of Takoma Park is interested in this matter because the station is located on the City's border, the City's residents make up the majority of the patrons at the station, and the station serves the customers of one of the City's major business districts, which is located just two blocks from the station.

As a preliminary matter, WMATA's application is premature because WMATA has not yet arrived at a final site plan.<sup>2</sup> As explained in Exhibit 10 to WMATA's application, despite WMATA's approval of the proposed site plan, the EYA project must still undergo the District of Columbia's Planned Unit Development ("PUD") process, which involves a thorough review of the Project by several agencies of the District of

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<sup>1</sup> The City is in receipt of WMATA's application and the attached exhibits. Notably, the application package does not include the transcript from the WMATA Board of Directors' Compact Hearing regarding the EYA project, which Brian Glenn advised WMATA to submit with its application in his letter to WMATA's Managing Director of October 31, 2005 (enclosed). The transcript is important because it reveals the overwhelming opposition to the project by local residents and elected officials and highlights the negative impacts that the project will have on the transit functions of the station. We trust that FTA will obtain the transcript from WMATA if it has not already done so and consider it before rendering a decision on the application.

<sup>2</sup> Brian Glenn, in his October 31, 2005, letter to WMATA's Managing Director (enclosed), specifically advised WMATA that a final site plan was required for FTA's review of the application.

Columbia government, and the Project may not proceed until the District of Columbia Zoning Commission approves it. The PUD process may result in significant changes to the Joint Development Project, and the Zoning Commission may impose conditions upon the Project that render the Project unfeasible to either WMATA or the Developer. In fact, the WMATA Board of Directors, in its resolution approving the EYA project, addressed the concerns of Montgomery County, Maryland, about pedestrian safety and access for persons with disabilities by requesting that the District of Columbia Office of Planning consider an alternative site plan prepared by the County during the PUD process. See Exhibit 10, p. 3, of WMATA's application.<sup>3</sup> Accordingly, the FTA should refrain from expending administrative resources to consider this preliminary site plan that is likely to undergo significant change or may even be abandoned by WMATA or EYA.

If the FTA decides to consider WMATA's application at this time, the EYA project does not satisfy the threshold requirements for federal funding of joint development in that it (1) does not enhance the effectiveness of a public transportation project or establish new or enhanced coordination between public transportation and other transportation and (2) does not provide a fair share of revenue for public transportation. In addition, the EYA project will reduce the accessibility of the station for disabled patrons in violation of the Americans with Disabilities Act.

I. The EYA Project Does Not Satisfy the Threshold Requirements for Federal Funding of Joint Development Because it Does Not Enhance the Effectiveness of a Public Transportation Project or Establish New or Enhanced Coordination Between Public Transportation and Other Transportation.

a. The proposed project does not enhance the effectiveness of a public transportation project.

Joint development projects involving the transfer of federally assisted real estate must constitute a "Capital Project" as defined in section 5302 of title 49 of the United States Code. Under section 5302, a capital project must either enhance the effectiveness of a public transportation project or establish new or enhanced coordination between public transportation and other transportation. Rather than enhancing the effectiveness of the WMATA system, the EYA project will hinder the effectiveness of the WMATA system by reducing ridership, increasing travel times, and increasing operating costs, both in the short and long term.

Several aspects of the project will result in reduced ridership. The first element of the project that immediately will reduce ridership is the reduction in the number of dedicated short term park-and-ride spaces. These spaces, unlike commuter spaces, result in multiple round trips every weekday. WMATA's application states that the EYA project will involve 1:1 replacement of the parking spaces at the station. In fact, the EYA project replaces the existing 149 space parking lot with a 121-space garage. WMATA appears to be counting the on-street parking spaces interspersed throughout the interior roadways in the new town house development. However, WMATA ignores the fact that the construction of 86 town houses will create significant additional demand for parking at the station by residents, visitors, and service vehicles. In addition, by dispersing the

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<sup>3</sup> Montgomery County Executive Isiah Leggett, in letters to WMATA dated October 4, 2007, and October 23, 2007, expressed his concerns about pedestrian safety under the EYA project and transmitted an alternative site plan that addressed his concerns. Those letters are enclosed. Notably, WMATA purports that an email dated March 3, 2006, from a Montgomery County staff member constitutes the "local government concurrence," Exhibit 8 to WMATA's application, required by Mr. Glenn's letter of October 31, 2005, when, in fact, the County Executive asked the Board to consider an alternative site plan in October 2007, "I strongly believe that it would be a mistake to proceed with a design that we know will result in significant and unnecessary pedestrian and vehicular hazards."

parking throughout the development rather than in a single lot, the EYA project will force motorists to meander through the station in search of a parking space, including driving through the newly created traffic circle at the end of the station's bus lanes.

WMATA claims that the EYA project will increase ridership because the construction of approximately 86 townhouses on the site will generate transit trips. However, the proposed townhouses will include two-car garages as a standard feature, so the owners of these homes are not likely to rely on public transportation for commuting or errand running. The project will further reduce ridership because of several design flaws.

First, the design will create severe congestion at the main entrance to the rail station because it reduces the depth of the existing plaza in front of the main entrance by 56 feet, leaving little room between the turnstiles and the bus bays for patrons entering and exiting the station. WMATA's application does not address this important issue.

Second, the design significantly increases the distance between the parking lot, including the kiss-and-ride spaces, and both entrances to the station.

Third, although WMATA's application asserts that the EYA project improves pedestrian safety by channeling pedestrians to cross walks and signaling certain cross walks, it actually makes the station more dangerous for pedestrians because it increases the number of pedestrian crossings by adding several interior roads and a traffic circle at the station.

The EYA plan design will also cause increased travel times for buses. Currently, buses have two dedicated entry/exit points and a dedicated turnaround loop; taxis and private vehicles using the kiss-and-ride and parking lot enter the station via a separate entrance and do not intermingle with buses, and only two crosswalks traverse the bus path. Under the EYA plan, buses will share an access road with private vehicles; the bus turnaround loop, which will be used by every bus for every trip, will be a traffic circle that will be shared with private vehicles; and buses must contend with at least six crosswalks, four of which surround the traffic circle. In addition, the traffic circle will be the closest, albeit illegal, drop off point to the elevator entrance to the rail station and is likely to be used as the defacto drop off point for disabled patrons, and during inclement weather, for able-bodied patrons. This will further increase congestion at the circle. WMATA's application notes, as a "transportation benefit," that car traffic will be permitted only in a small portion of the traffic circle. WMATA ignores the fact that, currently, the buses have a dedicated turnaround loop with no cars or crosswalks. In addition, cars entering the station via the Eastern Avenue access road will be forced to turn around in the parking garage, make a U-turn on the access road, or enter the circle illegally, which will increase congestion at the station.

The EYA plan design will also increase operating costs. Given the aforementioned problems with vehicular circulation at the site, transit police likely will be required to prevent illegal entry and drop offs in the traffic circle and to direct pedestrian and vehicular traffic at the traffic circle.

WMATA's application asserts that the Project provides a public transportation benefit because it provides one additional bus bay (for a total of 10) and four bus layover spaces. Notably, although WMATA's Operations Office and Montgomery County's Ride-On bus service stated that the number of bus bays at the site under the EYA plan was sufficient for their needs, Exhibits 7 and 8 of WMATA's application, the Takoma Transportation Study, which was commissioned by the District of Columbia Government and the City of Takoma Park and completed in 2003, forecasted that eleven bus bays and one layover space would be needed at the Takoma station to accommodate additional routes and increased frequencies of existing routes necessitated by increased demand. Because WMATA is transferring all of the remaining land to the developer for the

construction of town homes, it will prevent WMATA from expanding its bus facilities to meet future demand. In the long term, as the population grows, energy costs increase, and traffic congestion worsens, demand for public transit will increase. WMATA, however, will have no room to expand the transit facilities at the Takoma station because, under the EYA plan, WMATA will not retain any unused land for future expansion.

b. The EYA project does not establish new or enhanced coordination between public transportation and other transportation.

Rather than establishing new or enhanced coordination between public transportation and other transportation, the EYA project decreases such coordination because of several design flaws. The EYA project hinders access by private automobile by (1) reducing the number of park-and-ride spaces at the Takoma Metro station, (2) increasing the distance between the parking lot and the entrances to the train station, and (3) causing confusion when passengers are picked up by private automobiles by creating two kiss-and-ride areas. The EYA plan reduces the coordination with taxicabs because it increases the distance between the cab stands and the elevator entrance to the train station. The EYA plan hinders pedestrian access by reducing the directness of pedestrian routes through the site and increasing the number of internal pedestrian street crossing on the site. As noted above, based on significant concerns about pedestrian safety raised by Montgomery County, Maryland, the WMATA Board of Directors' resolution approving the EYA project directed the District of Columbia Office of Planning to consider the County's alternative site plan during the PUD process. These issues have not yet been addressed, and will not be addressed until the District of Columbia planning process runs its course. Therefore, FTA should reject the application either because it hinders pedestrian access or because the application does not include a final site plan that details how the pedestrian safety issues will be addressed.

The EYA project will hinder coordination between Metro rail and all other forms of transportation because it will cause congestion at the main entrance to the train station. As noted above, the EYA plan will reduce the depth of the existing plaza in front of the main entrance by 56 feet. At current ridership levels, during peak hours, the existing plaza provides adequate but not excessive room between the turnstiles and the bus lane for patrons entering or exiting the station to wait to cross the bus lane or enter the station. Under the proposed site plan, this area will be severely congested.

Although, normally, design flaws are correctable, in this case, the flawed design is driven by the limited area of land retained for the transit facilities. The FTA's approval of the WMATA application will cement these design flaws because, EYA, which specializes in luxury townhouses, steadfastly has refused to consider alternative site plans that will preserve more land for transit purposes.

II. The EYA Project Hinders Access to the Station by Persons with Disabilities in Violation of the Americans with Disabilities Act.

WMATA's application asserts that the EYA project improves access to the station for disabled patrons that are dropped off at the station in private vehicles or that park at the station because it places the disabled parking spaces and drop-off area under cover in the parking garage. WMATA ignores the far more significant fact that the EYA project increases the distance that disabled patrons must travel, without cover, to reach the station elevator will be increased from 140 feet to 227 feet, which, according to Americans with Disabilities Act Accessibility Guidelines, will require disabled patrons to rest for an additional two minutes. The Guidelines provide that

on trips over 100 ft (30 m), disabled people are apt to rest frequently, which substantially increases their trip times. Resting periods of 2 minutes for every 100 ft (30 m) can be used to estimate travel times for people with severely limited stamina. In inclement weather, slow

progress and resting can greatly increase a disabled person's exposure to the elements.

## 28 C.F.R. Part 36, Appendix A.

Second, currently there is a direct line of sight from the automobile drop-off point for disabled patrons to the elevator entrance to the station, which is located at the end of a 57-foot tunnel. Under the EYA plan, persons picking up or dropping off disabled patrons will not be able to see the patrons as they walk the 57 feet through the tunnel to and from the elevator. This will increase the risk that disabled patrons will either be the victims of robberies and assaults or will be unable to get needed assistance for other reasons, and will deter disabled patrons from using the station.

Third, the EYA plan included with the WMATA application does not show contour lines, as a final site plan would. If it did, it would become clear that the reduction in the size of the plaza at the main entrance will cause slopes at the main entrance that will be difficult to manage for people who walk with assistance. Also, the steps and railings at the main entrance that will be required to address the grade changes will add to the general congestion at the entrance, adding discomfort to those who walk slowly or with an unsteady gait.

### III. The EYA project does not provide a fair share of revenue for public transportation.

In addition to enhancing public transportation, joint development projects must “provide[] a fair share of revenue for public transportation that will be used for public transportation.” 49 U.S.C. § 5302(a)(1)(G). The FTA’s guidance regarding this criterion gives the recipient transit agency broad discretion to determine whether its revenue from the project is fair, but expressly requires that

the recipient’s Board of Directors (or similar governing body) determines, following reasonable investigation, that the terms and conditions of the joint development improvement (including, without limitation, the share of revenues for public transportation which shall be provided thereunder) are commercially reasonable and fair to the recipient

72 Fed. Reg. 5791 (2007).

In this case, WMATA’s Board of Directors approved the joint development project on November 8, 2007, including the First Amendment to the Purchase, Sale, and Development Agreement that established the sale price of the land to be transferred to EYA. However, the appraisal WMATA submitted with its application was completed in May 2008, more than six months after the Board approved the Amended Sales Agreement. Therefore, the WMATA Board clearly failed to conduct a reasonable investigation prior to determining that the Agreement was commercially reasonable.

More important, Ryland Mitchell, an independent appraiser retained by the City of Takoma Park to review the appraisal report submitted by WMATA in support of its application, discovered a significant error of fact and an even more significant error in methodology in the appraisal report, which indicates that WMATA not only failed to conduct a reasonable investigation but is also not receiving a fair price. A copy of a letter from Mr. Mitchell explaining the errors is enclosed.

Regarding the error of fact, Mr. Mitchell has specific knowledge that one of the comparable sales used by WMATA’s appraiser to value the WMATA property incorrectly indicated that Comparable Sale No. 3 involved finished townhouse lots (i.e., subdivided and recorded lots) instead of raw land and, therefore, incorrectly reduced the value of the WMATA property, which is also raw land, by 25%.

Regarding the error in methodology, Mr. Mitchell explained that all four Comparable Sales in the WMATA appraisal report involved sales from the land developer to a home builder, that the prices paid were negotiated prior to the developer obtaining the necessary government approvals, and that the home builders were not obligated to purchase the land if the necessary approvals were not obtained. This is, in essence the same arrangement that EYA has with WMATA. If the FTA or the District of Columbia do not approve the EYA project, EYA is free to terminate the Sales Agreement. See Exhibit 11 to WMATA's application at pp. 7-8, 10. However, WMATA's appraisal report discounts value of the WMATA property by more than 30% because the necessary government approvals have not been granted.

These clear errors in the appraisal relied upon by WMATA to provide financial justification for the project demonstrate that it has failed to conduct a reasonable investigation of the commercial reasonableness of the proposed transaction with EYA, particularly in light of the fact that the assessed value of the property substantially exceeds both the sale price and the appraised value.

Even assuming the property's actual value is only the \$6.4 million stated in WMATA's appraisal, the transaction is not commercially reasonable for WMATA. As the City of Takoma Park documented during the Compact Hearing proceeding, under the Joint Development Sales Agreement between WMATA and EYA in force at that time, the cost of installing the replacement transit facilities, which WMATA was required to bear, would have exceeded the gross proceeds from the sale of the land. Recognizing this, WMATA amended the Sales Agreement to ensure that WMATA nets \$2.5 million from the transaction by (1) requiring EYA to pay WMATA between \$8,065,000<sup>4</sup> and \$9,745,000,<sup>5</sup> (2) requiring WMATA to maintain the purchase money less \$2,500,000 (\$5,565,000 to \$7,245,000) in escrow, (3) requiring EYA to construct the replacement facilities, (4) requiring WMATA to pay EYA for the cost of constructing the replacement facilities until the escrow is exhausted, and (5) requiring EYA to complete the remainder of the replacement facilities at its own cost. This amended contract is troubling in many respects.

Charron Construction Consulting, Inc., reviewed EYA's replacement facility construction budget and determined that, assuming construction in 2007, the total cost of the replacement facilities would be \$7 million with the proposed parking garage. This estimate did not include the cost of cosmetic improvements likely to be required by the Historic Preservation Board or the District of Columbia Zoning Commission, and the construction will not begin in 2007. Accordingly, because the Board approved the EYA Project with the parking garage option, WMATA is certain not to net more than \$2,500,000 from the sale. Moreover, once the escrow is depleted, WMATA will be in the unenviable position of trying to ensure EYA stays on schedule and does not cut corners as it constructs the replacement facilities at its own cost. This is particularly troubling because the Joint Development Sales Agreement does not include a detailed description of the replacement facilities.

Finally, the EYA project does not make financial sense to WMATA because the "improvements" to the transit facilities are not actually improvements—they are changes made to the transit facilities necessary to make room for the townhouse development. The existing 150 space parking lot is being replaced by a 120-space garage because the land where the parking space is located is needed for townhouses. The dedicated bus turnaround loop is being replaced by a traffic circle to be used by pedestrians, private vehicles, and busses. because the land where the turnaround loop is needed for townhouses. The decent walkable entrance to the

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<sup>4</sup> The minimum purchase price, regardless of the number of market rate townhouse units to be constructed, since WMATA has required the construction of a parking garage.

<sup>5</sup> The price to be paid if EYA is permitted to construct 86 market rate townhouses.

station is being replaced by a more compressed, less sufficient entrance with grading concerns that will inhibit disabled patrons and may require steps. The EYA project does result in one additional bus bay. It also creates four layover spaces, although the Takoma Transportation indicated only one layover space was necessary, because there is dead space in the center of the bus lane. In short, WMATA is trading 4.9 acres of transit-oriented land in Washington, D.C., for \$2.5 million and one bus bay.

Thank you for your consideration of the City's concerns. The importance of the FTA's role in this case cannot be overstated, as WMATA has failed objectively to consider the merits of the EYA project from the outset. EYA was the only developer to respond to WMATA's July 29, 1999, solicitation for proposals to develop the Takoma station. WMATA's solicitation provided no criteria for the proposals, so EYA's proposal was designed to maximize its profit by maximizing the number of townhouses that it could build on the site. In 2007, a WMATA appointed task force harshly criticized the joint development policy that controlled WMATA's internal proceeding on this project. Specifically, the task force criticized the policy because it resulted in a paucity of bidders for each project, did not involve sufficient pre development planning, and focused on the generation of cash rather than transit improvement and transit-oriented development. In February 2007, WMATA adopted a new policy in response to the task force's criticisms, but is pushing forward with this ill conceived project even though it was processed under the discredited procedure. The City of Takoma Park urges the FTA to deny WMATA's application to transfer federally assisted real estate for a project that will reduce the effectiveness of the Takoma station.

I enclose the Resolution passed unanimously by the City Council of Takoma Park which requests that the FTA disapprove the EYA project, as well as a copy of an earlier City Council Resolution regarding the EYA project.

Very truly yours,

Susan Silber  
City Attorney  
City of Takoma Park

Encl: Takoma Park Resolutions  
Ryland Mitchell letter  
Brian Glenn letter  
Isiah Leggett letters of October 4 and October 23, 2007

cc: Representative Chris Van Hollen  
Representative Eleanor Holmes Norton  
Senator Barbara Mikulski  
Senator Ben Cardin  
MD State Delegate Heather Mizeur  
MD State Senator Jamin Raskin  
County Executive Isiah Leggett  
Brian Glenn